(2) Enhanced staffing levels. Participating facilities desiring to staff above the minimum requirements from (VI)(D)(1) may request staffing enhancements from an array of enhanced staffing options and associated add-on payments during enrollment. Enhanced staffing options offered are based upon multiples of one LVN equivalent minute.

(3) Granting of staffing enhancements. All requested enhancements are divided into two groups: pre-existing enhancements that facilities request to carry over from the prior year and newly-requested enhancements. Newly-requested enhancements may be enhancements requested by facilities that were nonparticipants in the prior year or by facilities that were participants in the prior year desiring to be granted additional enhancements. Using the process described herein, the distribution of pre-existing enhancements is determined. If funds are available after the distribution of pre-existing enhancements, the distribution of newly-requested enhancements is determined.

(a) For each enhancement option, projected units of service for facilities requesting that option are determined and multiplied by the rate add-on associated with the option as determined in (VI)(F)(2).

(b) The sum of the products from subparagraph (VI)(D)(3)(a) is compared to available funds.

(c) If the product is less than or equal to available funds, all requested enhancements are granted.

(d) If the product is greater than available funds, enhancements are granted beginning with the lowest level of enhancement and granting each successive level of enhancement until requested enhancements are granted within available funds.

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(E) Determination of direct care staff rates for nonparticipating facilities.

(1) Determine the sum of recipient care costs from the direct care staff cost center in all nursing facilities included in the Texas Nursing Facility Cost Report database used to determine the nursing facility rates in effect on January 1, 2000 (hereinafter referred to as the initial database).

(2) Adjust the sum from (VI)(E)(1) in order to account for inflation utilizing the inflation factors used in the determination of the nursing facility rates in effect January 1, 2000.

(3) Divide the result from (VI)(E)(2) by the sum of recipient days of service in all facilities in the initial database and multiply the result by 1.07. The result is the average direct care staff rate component for nonparticipating facilities.

(4) To calculate the direct care staff per diem rate component for nonparticipating facilities for each of the 11 TILE case mix groups and for the default group, multiply each of the standardized statewide case mix indices associated with the initial database by the average direct care staff rate component from (VI)(E)(3).

(5) The direct care staff per diem rates will be adjusted as follows. For rates effective September 1, 2000, the rate derived in (VI)(E)(3) of this subsection will be multiplied by 1.016, which is the lowest feasible rate of increase for the PCE chain-type price index from the January through August 2000 rate period to the prospective rate period of state fiscal year 2001. Effective September 1, 2001, and thereafter, the direct care staff per diem rate will be adjusted for inflation using the lowest feasible PCE chain-type price index forecast from state fiscal year 2001 to the prospective rate period.

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(F) Determination of direct care staff rates for participating facilities. Direct care staff rates for participating facilities will be determined as follows:

(1) Determine the direct care staff rate associated with maintaining direct care staff minutes at the minimum levels required for participation.

(a) Determine the sum of recipient care costs from the direct care staff cost center in all nursing facilities as included in the initial database from (VI)(E)(1).

(b) Adjust the sum from (VI)(F)(1)(a) to inflate the costs to the prospective rate year as per (III)(D).

(c) Divide the result from (VI)(F)(1)(b) by the sum of recipient days of service in all facilities in the initial database from (VI)(E)(1) and multiply the result by 1.07. The result is the average direct care staff rate associated with maintaining direct care staff minutes at the minimum levels required for participation.

(d) Case-mix adjustment of direct care staff per diem rate component. To calculate the direct care staff per diem rate component associated with maintaining direct care staff minutes at the minimum levels required for participation for each of the 11 TILE case-mix groups and for the default group, multiply each of the standardized statewide case-mix indexes associated with the initial database from (VI)(E)(1) by the average direct care staff rate component from (VI)(F)(1)(c).

(e) The initial database from (VI)(E)(1) used in determining the direct care staff rates will not change, except for adjustments for inflation from (VI)(F)(1)(b). TDHS may also recommend adjustments to the rates when new legislation, regulations, or economic factors affect costs and these effects are not accounted for in the initial database or the inflationary adjustments. For example, a change in the minimum wage would not immediately be accounted for in the inflationary adjustments. In such a situation, the department will project costs associated with new legislation, regulations, or economic factors according to the methodology at (III)(D).

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(2) Determine the direct care staff rate add-on associated with each enhanced staffing level. Determine the estimated cost of one LVN equivalent minute using the most recently available, reliable data relating to LVN equivalent compensation levels in Texas NFs, including salaries and wages, payroll taxes, and benefits, inflated to the prospective rate period as per (III)(D). The per diem add-on payment for each enhanced staffing level will be equal to the estimated cost of one LVN equivalent minute multiplied by the number of LVN equivalent minutes included in the level.

(3) Determine each participating facility's total direct care staff rate. Each participating facility's direct care staff rate will be equal to the direct care staff rate associated with maintaining direct care staff minutes at the minimum levels required for participation from (VI)(F)(1) plus any add-on payments associated with enhanced staffing levels selected by and awarded to the facility during enrollment.

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(G) Staffing accountability. Participating facilities will be responsible for maintaining the staffing levels determined in (VI)(D). Participating facilities that fail to maintain staffing at their required level will have their direct care staff rates and staffing requirements adjusted to a level consistent with the highest staffing level that they actually attained and all direct care staff revenues associated with unmet staffing goals will be recouped by TDHS. Participating facilities that fail to meet the minimum direct care staff requirements for participation will be removed from participation. Facilities removed from participation may re-enroll in the enhanced direct care staff rate during the next enrollment period. Re-enrollments for facilities previously removed from participation are treated as newly-requested enhancements as per (VI)(D)(3) above.

(H) Spending requirements for all facilities. All facilities, participants and nonparticipants alike, are subject to a direct care staff spending requirement with recoupment calculated as follows:

(1) At the end of the facility's rate year (with the implementation rate period being treated as a rate year), a spending floor will be calculated by multiplying accrued Medicaid direct care staff revenues by 0.85.

(2) Accrued allowable Medicaid direct care staff expenses for the rate year will be compared to the spending floor from (VI)(H)(1). TDHS will recoup the difference between the spending floor and accrued allowable Medicaid direct care staff expenses from facilities whose Medicaid direct care staff spending is less than their spending floor.

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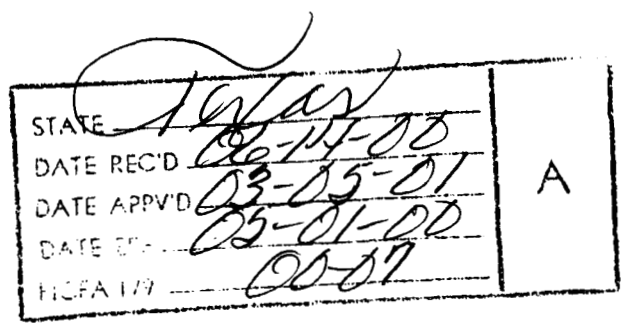
(I) Mitigation of recoupment. Recoupment of funds described in (VI)(H) may be mitigated as follows.

(1) Calculate dietary cost deficit. At the end of the facility's rate year (with the implementation rate period being treated as a rate year), accrued Medicaid dietary per diem revenues will be compared to accrued, allowable Medicaid dietary per diem costs. If costs are greater than revenues, the dietary per diem cost deficit will be equal to the difference between accrued, allowable Medicaid dietary per diem costs and accrued Medicaid dietary per diem revenues. If costs are less than revenues, the dietary cost deficit will be equal to zero.

(2) Calculate dietary revenue surplus. At the end of the facility's rate year (with the implementation rate period being treated as a rate year), accrued Medicaid dietary per diem revenues will be compared to accrued, allowable Medicaid dietary per diem costs. If revenues are greater than costs, the dietary per diem revenue surplus will be equal to the difference between accrued Medicaid dietary per diem revenues and accrued, allowable Medicaid dietary per diem costs. If revenues are less than costs, the dietary revenue surplus will be equal to zero.

(3) Calculate fixed capital cost deficit. At the end of the facility's rate year (with the implementation rate period being treated as a separate rate year), accrued Medicaid fixed capital per diem revenues will be compared to accrued, allowable Medicaid fixed capital per diem costs (i.e., building and building equipment depreciation or lease expense, mortgage interest, land improvements depreciation and leasehold improvements amortization). If costs are greater than revenues, the fixed capital cost per diem deficit will be equal to the difference between accrued, allowable Medicaid fixed capital per diem costs and accrued Medicaid fixed capital per diem revenues. If costs are less than revenues, the fixed capital cost deficit will be equal to zero. For purposes of this paragraph, fixed capital per diem costs of facilities with occupancy rates below 85% are adjusted to the cost per diem the facility would have accrued had it maintained an 85% occupancy rate throughout the rate year. For each facility whose occupancy falls below 85%, an adjustment factor is calculated as follows: adjustment factor = 1.00 - (facility's occupancy rate / .85). This adjustment factor is then multiplied by accrued, allowable Medicaid fixed capital per diem costs, and the result of this calculation is subtracted from accrued, allowable Medicaid fixed capital per diem costs.



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(4) Calculate fixed capital revenue surplus. At the end of the facility's rate year (with the implementation rate period being treated as a separate rate year), accrued Medicaid fixed capital per diem revenues will be compared to accrued, allowable Medicaid fixed capital per diem costs as defined in (VI)(I)(3). If revenues are greater than costs, the fixed capital revenue per diem surplus will be equal to the difference between accrued Medicaid fixed capital per diem revenues and accrued, allowable Medicaid fixed capital per diem costs. If revenues are less than costs, the fixed capital revenue surplus will be equal to zero. For purposes of this paragraph, fixed capital per diem costs of facilities with occupancy rates below 85% are adjusted to the cost per diem the facility would have accrued had it maintained an 85% occupancy rate throughout the rate year. For each facility whose occupancy falls below 85%, an adjustment factor is calculated as follows: adjustment factor = 1.00 - (facility's occupancy rate / .85). This adjustment factor is then multiplied by accrued, allowable Medicaid fixed capital per diem costs, and the result of this calculation is subtracted from accrued, allowable Medicaid fixed capital per diem costs.

5) Facilities with a dietary per diem cost deficit will have their dietary per diem cost deficit reduced by their fixed capital per diem revenue surplus, if any. Any remaining dietary per diem cost deficit will be capped at $2.00 per diem.

(6) Facilities with a fixed capital cost per diem deficit will have their fixed capital cost per diem deficit reduced by their dietary revenue per diem surplus, if any. Any remaining fixed capital per diem cost deficit will be capped at $2.00 per diem.

(7) Each facility's recoupment, as calculated in (VI)(H), will be reduced by the sum of that facility's dietary per diem cost deficit as calculated in (VI)(I)(5) and its fixed capital per diem cost deficit as calculated in (VI)(I)(6).

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